

INSIDE ALEC

October 2008

A Publication of the American Legislative Exchange Council



Seeking Higher-Ed Accountability

Protecting Taxpayers

By Gov. Mitch Daniels

In a Time of Need:
ALEC Members Offer
Hurricane Disaster Aid

**New Model
Legislation Inside**

Chairman's Column

Time for School Choice

By Arkansas State Sen. Steve Faris, Senate Majority Whip



With kids back in school we again gear up for the debate over vouchers, scholarships, tax credit programs, virtual schools, charters, magnet schools, and funding. ALEC's position has always been one of supporting competition and the freedom of parents to choose the best education for their children.

We are fortunate to have so many private sector members who are working on these issues and helping legislators across the country to improve the quality of education, especially for those most in need. In recent years we have witnessed a dramatic change in both the public perception and support for school choice and growing support among lawmakers at all levels of government and across party lines.

This has especially been the case among policymakers in troubled school systems. Folks like Cory Booker, the mayor of Newark, New Jersey, and Washington, D.C. Mayor Adrian Fenty, have been increasingly willing to take on entrenched bureaucracies to pursue school choice.

Florida's Corporate Tax Credit Scholarship (CTC) Program was approved this year with significant bipartisan support. In New Orleans the two primary sponsors of an opportunity scholarship program were Democrats. And in New Jersey and Maryland, legislators from both parties have introduced school choice legislation.

Earlier this year, ALEC member Alliance for School Choice presented its State Executive of the Year Award to Pennsylvania Governor Ed Rendell and its State Legislator of the Year Award to Pennsylvania State Representative Dwight Evans of Philadelphia.

Recent polls by the Friedman Foundation for Educational Choice, as well as by the Hispanic Council for Reform and Educational Options (Hispanic CREO), and the Alliance for School Choice (ASC) show an increasing majority of parents support a variety of choice options when it comes to education.

In this issue of *Inside ALEC* Vicki E. Murray of the Pacific Research Institute emphasizes how funding formulas can help improve education by increasing transparency, and local control by principals and parents. Also, Anne Neal, President of the American Council of Trustees and Alumni, writes about the problem of accreditation in higher education and viable alternatives.

The vast majority of children in this country attend public schools with good and dedicated teachers. This system works well for most kids but not all. It is important to promote different option and choices for parents to best meet the needs of their children. School choice does not threaten public education; rather it can only help to improve it.

INSIDE ALEC

October 2008

A Publication of the American Legislative Exchange Council

2008 National Chair

Arkansas State Sen. Steve Faris

Private Enterprise Board Chairman

Jerry Watson
American Bail Coalition

Executive Director

Alan B. Smith

Senior Director of Policy and Strategic Initiatives

Michael Bowman

Senior Director, Events and Meetings

Rachael Heiner

Senior Director, Finance and Administration

Lisa Bowen

Senior Director of Membership and Development

Mike Conway

ALEC Exhibits & Advertising

Exhibiting or advertising at an ALEC event is a great way to promote your company to members of both the private and public sector. If you are interested in exhibiting or advertising at an ALEC meeting, please contact Rob Pallace at 202-466-3800 or email him at exhibits@alec.org.

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

© American Legislative Exchange Council
1101 Vermont Ave., NW, 11th Floor
Washington, D.C. 20005
(202) 466-3800 • Fax: (202) 466-3801
www.alec.org

ALEC Calendar

December 4-6, 2008	States & Nation Policy Summit	Washington, D.C.
May 1-2, 2009	Spring Task Force Summit	Memphis, TN
July 15-19, 2009	ALEC Annual Meeting	Atlanta, GA
December 2-4, 2009	States & Nation Policy Summit	Washington, D.C.

Combating Copper Thievery

By Seth Cooper

Copper theft is a growing criminal enterprise. It affects both the public and private sectors as thieves swipe everything from municipal manhole covers and street signs to utility poles and underground wiring and piping. Public safety has been jeopardized by such illegal activities. But increased steps are being taken to fight copper theft, including legislation to hold criminals accountable and to safeguard the safe and legal purchase of scrap metal.

Due to a declining U.S. dollar and increasing demand, the value of copper has increased significantly. Whereas ten years ago the price of copper hovered around 75 cents per pound, today copper is valued at about \$3.50 per pound, and copper thieves frequently try to sell the stolen goods to scrap metal dealers.

No government agencies gather statistical data on the crime of copper theft. This makes nationwide estimates of damages difficult to ascertain. But records compiled by private companies who've been struck by copper thieves as well as police reports and public news reporting reveal some astonishing losses.

The telecommunications industry has been particularly hard hit. AT&T suffered close to \$6.7 million in losses from copper thieves in 2007 alone. In the last twelve months, Embarq has been hit by thefts of copper cable amounting to over \$130,000 just in the area of Houston, Texas. Both AT&T and Embarq have established bounty programs in areas where they've been particularly stung by copper theft. Crime witnesses have been offered reward bounties of up to \$10,000 for tips leading to the identification, arrest, and conviction of copper thieves.

Aside from the economic loss to private industry, customers of telephone and cable telecommunications services have experienced service outages as a result of copper theft vandalism. This summer, an outage affecting almost 16,000 customers in Tillamook County, Oregon, occurred when



copper thieves damaged a plant operated by Charter Communications.

Public safety is also a concern. Break-ins and vandalism of utility and telecommunications equipment has resulted in the electrocution deaths of copper thieves in several instances. Service personnel who arrive on the scene to repair damage are also at risk of electrocution.

Since so much stolen scrap is offered for sale to scrap metal dealers, ALEC's Criminal Justice & Homeland Security Task Force adopted the *Responsible Scrap Metal Purchasing and Procurement Act* last year. This model legislation provides important clarification to the definition of scrap (as detailed in an article in *Inside ALEC*'s July 2007 issue addressing the problem of stolen beer kegs).

This August, ALEC's Criminal Justice and Homeland Security Task Force adopted a set of significant amendments to the *Responsible Scrap Metal Purchasing and Procurement Act*. The amendments strengthened the identification requirements for sale and purchase of scrap metal. They also clarified the definition of scrap to include telecommunications equipment. The penalties section of the model bill now specifies that it is a felony if any person willfully injures, destroys, or pulls down

any telephone, cable telecommunications pole, or power line, in addition to wires, transformers, or other telephone, cable telecommunications, or wireless equipment. Adoption of ALEC's new *Responsible Scrap Metal Purchasing and Procurement Act* in the states can help to hold criminals accountable for violating property rights, damaging our telecommunications infrastructure, and endangering the public safety.

Seth Cooper is the Director of the Telecommunications & Information Technology Task Force. ALEC's Responsible Scrap Metal Purchasing and Procurement Act is available at www.alec.org.



Protecting Taxpayers: The Benefits of an Automatic Taxpayer Refund

By Governor Mitch Daniels



At what point should government stop collecting money from its citizens? At what point should government recognize that tax dollars belong to the people and should only be collected for essential purposes?

For the first time in a long time, after three straight balanced budgets and a solid surplus in our reserve accounts, Hoosiers are able to ask themselves such questions. But we didn't get to this point without a lot of hard work.

In 1999, when red ink first appeared on the books of the state, Indiana had a \$2 billion surplus, and many thought the good times would last forever. By 2003, when I was running for Governor, that \$2 billion surplus was just about gone. When the people hired us, therefore, we knew that fiscal recovery was vital, and that we needed a new approach. Step one in the process was simple but effective: we started spending less than we took in.

Having achieved a balanced budget – the first of three straight we've delivered – step two on the path to solvency was to pay back the state's debts. During the years of fiscal profligacy, the state had borrowed \$800 million covertly, without the permission of the borrowers, by stiffing schools and local governments and universities—holding back state funds they were entitled to until the next fiscal year arrived. Adding insult to injury, the state did not pay interest on these unapproved withholdings. The payments were delayed by about six months, and at no point did the state compensate these schools, universities, and local governments for the carrying charge. It was the state's obligation to make up for these payment delays, so over the last three years we have paid back all of these debts.

Step three on the road to recovery was to replenish the state's savings account. As I noted above, by 2004, our \$2 billion surplus was gone—our net worth, so to speak, was negative. Through prudent fiscal management, by the end of the most recent fiscal year, our reserves were back to over 10 percent of the state's annual operating budget.

Our focus on matching spending to revenues, on paying back our debts, and on restoring our savings account has caused others to take notice. This year, to our great pleasure, the state received its first ever AAA credit rating. And I can't help but notice that we received that upgrade at a time when 32 states are struggling to slash red ink.

Now, having put our fiscal house back in order, we are in a position to talk about step four: tax cuts. While other states are discussing increased tax rates or decreased services, we are discussing how to give money back to taxpayers.

My proposal, like the rest of my budgeting philosophy, is simple: once government has collected enough money to pay its bills, the rest should be returned to the taxpayers who earned the money in the first place.

But this isn't just about rhetoric, it's about practicality too. After all, if government gets its hands on the taxpayer's money, it is likely to spend it. Remember those 32 states that are in the red? A few years ago when Indiana was broke, they were flush. What did they do? Imagining that the good times would roll on and on, they committed to new spending programs which now they can't afford.

So here's my suggestion: an automatic taxpayer refund. A dividend, if you will. Once the state reaches a level of fiscal sufficiency—the fiscal experts say a surplus around 10% of your next budget—any additional monies collected ought to be refunded automatically to taxpayers on their next income tax return.

We took a look at our budget history to see how much money this would have returned to Hoosier taxpayers in prior years. Back in the 1990s, when the state was brimming with cash, taxpayers would have received tax refunds as high as \$288 per joint-filer. That's not a huge sum of money, but surely every little bit helps.

Not only would the automatic taxpayer refund return money to the taxpayers, but it would also create a new

set of incentives for our legislators: incentives that lead them in the direction of caution in spending public dollars. Lawmakers will know that if they manage the budget so that more than 10 percent remains in reserve, their constituents will get a tax cut they can rightly take credit for. This would reverse the existing incentives which lead lawmakers to spend more and more, trying to curry public favor to the detriment of the public interest.

Every action we've taken to straighten out our state's finances—from balancing the budget, to paying back our debts, to building up our reserves and, now, to returning the surplus to the taxpayers—was driven by the philosophy that government is but a steward of the taxpayer's money.

This philosophy was certainly near and dear to the heart of Thomas Jefferson, whose principles guide the work of ALEC. Jefferson once said that "(t)he multiplication of public offices, increase of expense beyond income, growth and entailment of a public debt, are indications soliciting the employment of the pruning knife." It is in this spirit that I offer my automatic taxpayer refund proposal.

Mitch Daniels in the Governor of the State of Indiana, and a former Director of the U.S. Office of Management and Budget (OMB).





Weighted-Student Formula Surges Ahead in 2007-2008

By Vicki E. Murray



To reconcile growing public demand for improved education performance with financing—that is more adequate and equitable—a growing number of state and school leaders are embracing school empowerment reforms.

In his 2007 State of the City Address, New York City Mayor Michael Bloomberg called for school empowerment through the “weighted-student formula” in which public funding for the city’s 1,467 schools follows the child to the schools of their parents’ choice. Likewise, Nevada Gov. Jim Gibbons’ statewide weighted-student formula plan would empower families with greater educational choice.

The concept of a weighted-student formula is gaining popularity in school districts across the nation as a policy tool to help get more funding into classrooms, increase transparency, improve equity by weighting funding according to pupil and district demographics, and restore local control by principals and parents.

According to research by the Reason Foundation’s education director, Lisa Snell, under the weighted-student formula model, schools receive funding based on the number of students that enroll at each individual school. Extra per-pupil dollars go for students who need services such as special education, English language instruction, or help catching up to grade level. School principals control how their school’s resources are allocated for salaries, materials, staff development, and other matters traditionally decided at the district level.

Consider New Jersey. After years of court-driven, ad-hoc approaches to public-school finance, New Jersey Gov. Jon Corzine implemented a weighted-student formula to create an equitable and predictable funding mechanism. Under Corzine’s plan, funding will be fairly applied to all public schools beginning in fiscal year 2009. New Jersey public charter schools in particular will benefit from this reform. Under the old finance system, charter schools received as little as half the funding their public school neighbors did. Now they will be funded based on the number and type of students who enroll—just like every other New Jersey public school. School empowerment programs multiply the impact of such reforms.

As the name implies, school empowerment programs devolve decision-making to the local level. They include public school

choice for parents and greater principal autonomy. Every school in a district becomes a school of choice, and the funding system gives individuals, particularly principals, the power to make important decisions over operations and personnel without having to jump through endless bureaucratic hoops. Even in states like California, that have long resisted local control by parents and principals, are embracing school empowerment plans.

The Los Angeles Unified School District and union officials have agreed to develop the Belmont Pilot Schools Network, a group of independent small schools that lets parents choose the school that’s best for their children. The network will consist of five to ten fully autonomous high schools launched over the next five years, with a maximum of 400 students each.

Baltimore Schools CEO Andres Alonso introduced a school empowerment program with a decentralized funding structure for city schools in 2008 that gives principals the authority to make decisions previously handled by the central district office. Alonso’s 2008-2009 empowerment plan streamlines 310 central district office jobs, redirects \$70 million from the central office to schools, and closes a \$50 million city schools’ shortfall. Principals will develop their own school spending plans based on enrollment projections for the 2008-2009 year. Importantly, principals’ budget control will increase from \$90 to \$5,000 of the \$13,000 the Baltimore City system spends annually per pupil under Alonso’s new school empowerment plan.

In Massachusetts, Gov. Deval Patrick is proposing a new form of public schools altogether, called “readiness schools.” They would use a weighted-student formula and assume unprecedented control over matters ranging from curriculum and hiring decisions, to school uniforms and the length of the school year. Philadelphia’s new school Superintendent Arlene Ackerman also plans to have a weighted-student funding pilot program out by fall 2009, with citywide adoption in September 2010.

Funding that follows students to schools that are run locally are reforms that make good sense in the current era of accountability.

Vicki E. Murray, Ph.D., is an Education Studies Senior Policy Fellow at the Pacific Research Institute in Sacramento, California. She is also a member of the ALEC Education Task Force. The author wishes to thank Reason Foundation Education Director Lisa Snell for her assistance preparing this article.

Seeking Higher-Ed Accountability

By Anne D. Neal



The French have an education ministry; the English put their faculty in charge. In America, the Tenth Amendment is clear—education is not one of the powers delegated to the federal government. As a consequence, state charters traditionally guard schools against federal control, and colleges and universities are run by lay boards of trustees secured from federal interference, thanks to Daniel Webster's suit before the Supreme Court in 1819. American higher education thrives because of this freedom. Various academic protocols—such as academic freedom—rightly protect it, while institutions assiduously defend their autonomy. That is why accreditation arose. In true Tocquevillian spirit, various associations emerged in the late 19th century to differentiate colleges from high schools. Over the years, these bodies developed voluntary criteria to identify the characteristics of a sound educational program, in a nongovernmental system of peer evaluation.

But it was not until the 1940s that accreditation took on the role it has today—namely, to serve as a gatekeeper for federal dollars. When it passed the GI Bill, Congress linked the accreditation process with the distribution of federal funds. As Congress saw it, accreditation would ensure accountability without subjecting institutions to harmful external controls. In the words of the statute, accreditors were to be “reliable guarantors of educational quality.” And the U.S. Secretary of Education annually certifies which accreditors are able to do the job.

VOLUNTARY NO LONGER

So, while accreditation began as a voluntary system, it has now become virtually mandatory. In the 1940s, the federal spigot was barely on. Now, sixty years later, federal student financial aid alone exceeds \$78 billion per year. For a college or university to lose accreditation would be a fatal blow. Perhaps it’s not surprising, then, that in the more than 60 years that accreditation has been mandated, a mere handful of schools have been shut down, and those largely for financial reasons. And in the last twelve years, only one accreditor has been deemed inadequate.

Meanwhile, on the accreditors’ watch, the quality of higher education is slipping. The American Council of Trustees and Alumni’s 2004 study of general education at 50 top colleges, administered by the University of Connecticut, found that 88 percent do not require a broad course on literature, over three quarters require no foreign language, and 62 percent require no mathematics courses. “Core” requirements may be satisfied instead by narrow and often trendy courses like the “History of Comic Book Art” at Indiana University, “Ghosts, Demons and Monsters” at Dartmouth, and the University of Minnesota’s history class “Rock Music from 1970 to Present.” Without a structured curriculum, students are left ignorant in many key areas of knowledge. In a 2000 ACTA survey of students at top colleges and universities, for example, nearly three quarters could not correctly answer a multiple-choice question about the effect of the Emancipation Proclamation.

It’s surely no surprise that the 2003 National Assessment of Adult Literacy found that millions of American adults could not even understand narrative texts such as newspaper articles or practical information such as instructions for taking medicine. Prose literacy has decreased among every educational attainment level since 1992. Meanwhile, grade inflation is at an all-time high, suggesting students are learning when evidence shows they are not.

ACCREDITATION IS PART OF THE PROBLEM

Despite this disappointing record, policymakers and trustees have, for the most part, assumed that accreditation guaranteed quality. The opposite is true: not only has accreditation not stopped higher education’s slide, it has

Continued on next page

ALEC POLICY FORUM

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

contributed to it. Far from preventing harmful intrusion into higher education, the system has empowered the accrediting cartels to impose their own standards and agendas on the schools they are meant to be helping. Political correctness, diffuse curricula, rising prices, the homogenization of higher education—all these are facilitated by the accreditors' regime. Wielding power as federal gatekeepers, they can enforce ideological and other tests unrelated to educational quality. A few examples:

- The Council on Social Work Education (CSWE) requires all accredited programs to ensure that students “understand the forms and mechanisms of oppression and discrimination and apply strategies of advocacy and social change that advance social and economic justice.” According to these standards, Missouri State University thought it was doing its job. But a federal civil rights lawsuit and an external review called by Missouri State President Michael Nietzel concluded quite the contrary. Rather than guaranteeing educational quality, the accredited program at the Missouri State School of Social Work was actually “bullying” students and producing an overall learning environment that reviewers called “toxic.”
- The National Council for Accreditation of Teacher Education (NCATE), like the CSWE, forced a particular perspective on its schools. Taking the lead from their accreditor, education schools across the country adopted criteria regarding students’ acumen in social justice and diversity. According to a May 31, 2005, story in the *New York Sun*, students at Brooklyn College complained they were penalized in a course on high school literacy when they challenged the professor’s assertion that grammatical English was the language of the oppressors. Similarly, the Chronicle of Higher Education reported in 2005 that Washington State University threatened education student Ed Swan with dismissal because he expressed his beliefs on topics such as gun control and religion after being asked not to do so. When ACTA and others brought these actions to light, NCATE agreed to drop the “social justice” provision from its standards, and its status as an accreditor was renewed.

In a report issued a few weeks later, former head of Columbia Teachers College Arthur Levine revealed that students taught by graduates of non-NCATE accredited schools do as well as those taught by graduates of unaccredited schools, while the most selective and best teacher education programs tend not to pursue NCATE accreditation at all. In his words, “teacher education accrediting policy and standards are more likely to reflect

the practices of the average or subpar programs rather than the outstanding ones. This is true of accreditation governance and review committees as well.”

- In 2006, George Mason School of Law professor David Bernstein objected to American Bar Association (ABA) provisions that law schools consider “diversity” in admissions—even in violation of state laws such as California’s Proposition 209—or else face the loss of accreditation. The American Law Deans Association also criticized the ABA, arguing that “the accrediting body inappropriately inserts itself into the internal affairs of the institutions it accredits and does so in a way that forces homogeneity, and conversely stifles innovation and diversity, among law schools.” The Deans Association represents administrators at about 100 top law schools; the Board of Directors that criticized the ABA included the deans of the Chicago and Harvard law schools.

But the problem of heavy-handed accreditors is not limited to the politicized accreditation of professional schools. Under the authority they wield as agents of the federal government, accreditors are able to interfere with institutional autonomy, the very principle they were designed to protect. The major regional accreditors of



colleges and universities routinely insert themselves into the internal affairs of their member schools. Accreditors attempt to undermine the power and authority of duly elected and appointed trustees who, in the eyes of the law, hold the ultimate fiduciary responsibility for the well-being of their schools.

In the early 1990s, the Middle States Association threatened to withdraw accreditation from Baruch College, a public institution in New York City whose faculty was 18 percent minority, on the grounds that it did not meet standards for racial and gender “equity and diversity.” Middle States also threatened to shut down Westminster Seminary because the school did not have any women on the governing board. These days, the Board of Trustees at St. Andrews Presbyterian College, in North Carolina, finds itself in a life-or-death struggle with the Southern Association of Colleges and Schools, which put the school on probation, because the association disagreed with the board’s strategic plan. In response, the school filed a federal lawsuit.

The Western Association of Schools and Colleges (WASC) has reached even greater levels of intrusiveness. In what appears to be a clear case of the accreditor’s picking sides, WASC took the initiative in 2006 to launch a special team to review leadership and board activities at the University of California. The team that visited the following year concluded that the Regents had fostered a “culture of interaction … that results in unnecessarily harsh treatment of UC administrators, faculty, and staff.” Far from promoting the public interest, accreditors forced the Regents and chancellors to devote precious time, not to mention taxpayer dollars, responding to their meddling and inaccuracies. Even more recently, WASC cited St. Mary’s, a small Catholic college in California’s Bay Area, for what the accreditor deemed a “sustained lack of civility.” After the Middle States incident at Baruch College, then-Secretary of Education Lamar Alexander sounded the alarm, deferring Middle States’ recognition and calling for a report from the Department of Education’s advisory committee on accreditation. The late Berkeley professor Martin Trow, then the committee’s chairman, went to the heart of the matter when he asked, “who sets the agenda on the campus?” Then he commented, “the accrediting agency may be coming on campus as one of the contending forces.”

The Department of Education’s Inspector General was also deeply concerned. In 1992, he told the House Education and Labor Committee that “billions of dollars available to students each year through loans and grants are at risk, in part because the recognition process does not assure that the accrediting agencies use appropriate and effective policies to accredit schools.” As a consequence, Congress amended

the Higher Education Act in 1992 and again in 1998, specifying that accreditors develop standards regarding “success with respect to student achievement in relation to the institution’s mission, including, as appropriate, consideration of course completion, state licensing examinations, and job placement rates.”

Given the examples recounted above, it’s not surprising that in two reports, ACTA raised questions about the integrity of the accreditation process. Accreditors promise to protect the public interest. In 2002, however, we asked the question: “can college accreditation live up to its promise?” The answer was no. Under the accreditors’ watch, quality is down, costs are up, and accountability is virtually nonexistent. Higher education is in trouble—and accreditation is part of the problem.

CONGRESS, DON’T BE FOOLED

Far from ensuring academic quality, ACTA found that the federal accreditation process was actually undermining it. The accreditation process suffers from structural problems: secrecy, low standards, and little interest in learning outcomes. Far from being independent arbiters of quality, accrediting review teams are made up of the very people under review: faculty and administrators of other colleges, often from the same area. The accreditors have been allowed to carve up the country into regional cartels, giving institutions virtually no choice in the accreditor they can use. And given the monopoly they exercise, accreditors have been able to apply intrusive, prescriptive standards. Sadly, Congress has allowed them to get away with it.

It’s time for those who care about higher education to tell Congress what it needs to hear: end federal accreditation. Don’t let accreditors deceive the American people and legislators into thinking that they have certified quality, when, in fact, they are actually threatening institutions’ autonomy and diversity—at considerable cost and wasted effort.

But don’t think the problem is solved simply by taking authority away from the accreditors and giving it to the institutions. While America’s long-standing deference to institutional autonomy and academic freedom is a good thing, our colleges and universities shouldn’t receive tax-exempt status and billions of dollars each year and then simply expect taxpayers and parents, students and policymakers to trust them in the face of massive evidence of problems. In other businesses of the size and importance of higher education, we demand transparency and accountability, and we should here as well.

Continued on next page

ALEC POLICY FORUM

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Institutional autonomy exists to protect the pursuit of truth, not to protect institutions from accountability. This privilege should not be invoked to discourage appropriate oversight and real self-regulation. But that is what is happening. In 2006, the Secretary of Education's Commission on the Future of Higher Education concluded that the accreditation system had "significant shortcomings" and asserted that "[t]he growing public demand for increased accountability, quality and transparency "required a "transformation of accreditation."

Yet when the Department of Education tried to find a way to ensure educational quality, what did higher education lobbyists do? They claimed that its institutional autonomy was under attack—a national ministry of education was right around the corner—and went running to Capitol Hill for relief. After intense lobbying by One Dupont Circle, the Senate and House approved the Higher Education Act which left the determination of learning goals and standards up to institutions, while leaving accreditors free to interfere in matters of governance, cost, and management in ways that intrude on institutional autonomy without ensuring educational quality. Meanwhile, in a memo, the Council on Higher Education Accreditation urged its members to lobby for further modifications—all of them designed to water down measures to enhance public accountability, whether by limiting accreditors' obligation to audit institutional information, restricting the Education Secretary's ability to appoint independent voices to the accreditation advisory committee, or seeking an end to an accreditation ombudsman.

GOING FORWARD

Rather than listening to the education lobby, Congress needs to listen to the people who matter: the students, parents, and taxpayers who fund higher education. In the face of mounting problems, the accreditation system neither protects the public nor ensures high-quality higher education. Congress should pursue other and better measures—at less cost and with less damage to higher education. And it is easy to do.

Decouple federal student aid from the accreditation process

The Department of Education already monitors what Congress needs to know to protect the public interest—whether institutions are or are not financially responsible. Existing regulations require that institutions submit audits every year and maintain good standing with the Department in order to participate in Title IV (student financial aid) programs. These reviews provide adequate consumer protection without the costs and shortcomings of accreditation.

At the same time, students and parents have access to more information about colleges and universities than ever before from books, magazines, and the Internet. Last year, the American Association of State Colleges and Universities and the National Association of State Universities and Land Grant Colleges announced the Voluntary System of Accountability (VSA), a data-reporting initiative that many of their members have opted to participate in. Consumers will be able to make decisions based on the information provided by the VSA's College Portrait far more easily than they can rely on the very minimal information conveyed by accreditation process.

Offer an alternative

If it won't eliminate the existing system altogether, Congress should adopt an alternative to it. In 2007, Rep. Thomas E. Petri proffered an amendment that would have allowed institutions to report to the public every five years on key institutional measures, within the existing accrediting system. Rather than relying on the secretive accreditation process, which occurs only once every ten years, this approach would have provided parents and students with helpful and regular information while giving institutions the flexibility to bring accrediting bodies on campus or not.

A similar measure has been drafted by ACTA and adopted by the American Legislative Exchange Council as model state legislation. This model legislation does not dictate what institutions must say or do; it respects institutional autonomy. What it does do is respond to the public demand for accountability by insisting that schools provide key information that will help parents and students understand whether colleges and universities are doing their job.

Provide competition in the states

The Texas Higher Education Coordinating Board has taken the lead in showing how states can detour around the costly, time-consuming regional accreditation route. The Board recently approved new rules that will allow any accrediting bodies recognized by the Department of Education, not just the regional accreditor, to accredit colleges in Texas. The rules also establish an alternative path to state certification along the lines of the proposed federal amendment, giving new entrants a way around the existing accreditation process.

Accreditors do not sell their services in competition with other firms. As monopolies, they have nearly unchecked power-making the accreditation process expensive for schools. Schools that are resource-poor typically find themselves at a disadvantage, no matter how well they educate their students. A college that needs or seeks both

regional and one or more specialized accreditations may be faced with a medley of inconsistent and uncoordinated standards that add to the difficulty and costs—including the opportunity costs—that accreditation entails. The Texas alternative means that institutions of all kinds will now be able to enter and compete in Texas, giving students more choices and parents and taxpayers greater accountability.

Break the accreditation monopoly

At a minimum, the Department of Education and state governments should require all colleges and universities to solicit bids for accrediting services, just as they do for other services. And the Secretary of Education could open up the process by insisting that all regional accreditors operate across the country, rather than artificially restricting their activities to specific regions. The existing accrediting regime not only dampens competition but hinders new entrants from innovating. At the same time, colleges and universities should support the creation of new accrediting agencies that offer more information on students and the results they achieve.

DO THE RIGHT THING

As experience has shown, self-regulation at its worst is a



buddy network, a barrier to entry, a closed and collegial system more concerned with sustaining itself than with enhancing the quality of higher education. Even if nothing else changes, accreditors can and should apply consistent standards relating to quality, and stay out of other areas.

Those in higher education have complained loudly about efforts by the Department of Education to emphasize student learning outcomes. But, the fact is, one need never go that far. If accreditors really cared about quality, they could, without further ado, insist on better input criteria, already used by at least one accreditor, the American Academy of Liberal Education, without requiring one-size-fits-all outcomes.

- Does the institution have a clear, published policy defining its commitment to liberty of thought and freedom of speech?
- Does the institution define and enforce academic entrance requirements that ensure students are prepared to take the required college-level general education courses?
- Do general education requirements guarantee a basic knowledge of math and the physical and biological sciences; foreign language; literature; the political, philosophical, and cultural history of Western civilization; and the foundations and principles of American society?
- Is teaching supported and rewarded?
- Do permanent faculty members, including senior ones, teach introductory courses as well as ones for majors, and are they regularly engaged in academic counseling?
- Does the curricular structure ensure an orderly progression from elementary to advanced levels of knowledge?
- Do students write substantial essays at every stage and demonstrate their proficiency in written English?
- Does the institution evaluate student progress in learning through a general intellectual skills examination?
- Does the school make available to the public printed materials demonstrating student learning and achievement?
- Does the school regularly conduct external peer reviews? How does it act upon those reviews?

TRUSTEES MUST SPEAK UP

Of all people, trustees should be most concerned about the current state of accreditation. And increasingly, they are. Jane B. Tatibouet, a regent of the University of Hawaii, knows that the accreditation process is wasting taxpayer money and failing to contribute to the quality of higher

Continued on next page

ALEC POLICY FORUM

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

education. As she put it at a recent forum in Washington:

[A]ccreditors require an absurd number of reports from the institution, draining human assets that could be otherwise efficiently used. The interests of the faculty and administrators have become primary to the accreditors and in direct conflict with engaged, reform-minded trustees. The accreditors, in my view, are subtly “blackmailing” the academic institution into obedience or sanctions will be imposed. The threat of a sanction or actual probation is the first tool used to keep a Board under the accreditor’s thumb, ultimately preventing the Board from performing its role both as steward and visionary while addressing accountability, financial and cost controls, and academic excellence. Furthermore, our experience in Hawaii might indicate to some that [the accrediting body] is edging into direct conflict with the state constitution.

In the face of troubling intrusion into their self-governance role, it’s time for trustees to speak up. Rather than allowing accreditors and internal campus constituencies to bully them through the accreditation process, it’s urgent they

exercise their rightful role as fiduciaries. Policymakers and accreditors need to hear from them, loudly and often, insisting on an end to federal accreditation and demanding the institutional independence that has for so long made American higher education the envy of the world.

Not only has accreditation not stopped higher education’s slide, it has contributed to it.

Self-regulation at its worst is ... a closed and collegial system more concerned with sustaining itself than with enhancing the quality of higher education.

Anne D. Neal is President of the American Council of Trustees and Alumni and a member of the National Advisory Committee on Institutional Quality and Integrity, which approves accreditors on behalf of the Department of Education. This article is designed to offer a general discussion of policy issues and not to represent or reflect the views of the committee. Special thanks are due to Michael Leo Pomeranz, Lewit Fellow in Education Policy at ACTA, for his assistance on this article.



AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Copyright © 2008 by the American Legislative Exchange Council. All Rights Reserved. Except as permitted under the United States Copyright Act of 1976, no part of this publication may be reproduced or distributed in any form or by any means, or stored in a database or retrieval system without the prior permission of the publisher.

Published by

American Legislative Exchange Council
1101 Vermont Avenue, NW, 11th Floor
Washington, D.C. 20005

NEW Model Bills 2008 Annual Meeting

CIVIL JUSTICE TASK FORCE

Resolution In Support Of Preserving Reasonable Limits On Wrongful Death Actions

This resolution supports preserving the criteria of full economic loss in wrongful death acts and opposes legislation that would either expand availability of subjective non-economic compensatory damages under a wrongful death act or expand the class of persons who may recover in the event of a wrongful death.

Resolution In Support Of Statutes Of Limitations That Promote Certainty And Fairness In Civil Litigation

This resolution resolves to oppose legislation that would abolish or dramatically extend civil statutes of limitations, and legislation that would revive time-barred claims.

Resolution On Transparency In State Private Attorney Contracts

This resolution calls for adherence to the U.S. Chamber Institute for Legal Reform's Attorney General Code of Conduct. It suggests guidelines for the contracting of outside counsel, including the use of competitive bidding, the avoidance of contingency fees where possible, the allowance of public oversight, and the avoidance of conflicts of interest.

COMMERCE, INSURANCE & ECONOMIC DEVELOPMENT TASK FORCE

Credit Enhancement Loan Act

An act establishing a loan for sub-prime consumers for the purpose of enhancing their credit. The bill establishes a licensing application and procedure for lenders. The bill also establishes for this specific product an interest rate, maximum loan amount, and frequency that loans may be granted.

Minimum Wage and CPI Resolution

A resolution opposing increases in minimum wage increases which are tied to the Consumer Price Index (CPI).

Business Ombudsman Act

An act establishing a business ombudsman, outlining the powers and functions, interaction with businesses and state agencies, and the means by which complaints are submitted and processed.

Statement Of Principles On Toll Roads

A statement of principles describing ALEC's policy on the following: tolling of single passenger vehicles in High Occupancy Vehicle lanes; restoration of the integrity of state and federal highway trust funds; tolling for the addition of new highway capacity, increasing or eliminating the federal limit on tax-exempt bonds for private investment on highways; pricing and advanced technologies on toll roads to reduce highway congestion; dedication of toll way proceeds; avoidance of regulations that would restrict state flexibility in determining the role of tolling and public-private partnerships.

CRIMINAL JUSTICE & HOMELAND SECURITY TASK FORCE

Citizens' Right To Know Act

This amends a current ALEC model bill to provide taxpayers and lawmakers with vital information regarding the effectiveness of the state's pre-trial release program. The Pretrial Release Agency in each county of each state will prepare a register displaying cases and defendants recommended for release. The register shall be readily available to the public.

Ignition Interlock Model Legislation

This bill provides for ignition interlock penalties for repeat drunk drivers and those who are found to have driven with a .15 blood alcohol content (BAC) or higher.

Continued on next page



The Responsible Scrap Metal Purchasing And Procurement Act

This amends a current ALEC model bill to enhance state laws regarding the purchases of scrap metal by scrap metal processors and to provide for appropriate penalties involving the purchase of stolen metal goods by scrap metal processors.

Resolution In Support Of The Second Chance Act

A resolution in support of alleviating crowding in jails and prisons by reducing recidivism through an improved reentry process. This will be accomplished through grants to governments and nonprofits that provide transitional services to adult offenders.

EDUCATION TASK FORCE

Family Education Savings Account Act

This act would create a tax deduction/credit for contributions made by state taxpayers into students' Coverdell education savings accounts, which allow tax-free savings for both K-12 and higher education expenses.

HEALTH AND HUMAN SERVICES TASK FORCE

Amendments To Taking The Best:

ALEC's Comprehensive Medical Liability Reform Proposal

Extracts key sections of the Act into a stand-alone model bill; adds model language on appeal from an interlocutory order; amends model language on pre-litigation medical review screening and mediation panels; adds model language on standards of proof in cases involving emergency care; and makes technical amendments.

Affordable Health Insurance Act

Allows high deductible health plan (HDHP) insurers to lawfully establish wellness incentives and health risk appraisal programs; authorizes the Commissioner of Insurance to allow Health Reimbursement

Arrangements to be sold in conjunction with individual health insurance policies; allows a 100% state income tax deduction of premiums paid for HDHPs established in conjunction with a Health Savings Account (HSA); provides a \$250 small business tax credit for spending at least that amount for each employee enrolled in

an HDHP established in conjunction with an HSA; exempts HDHPs, when established with an HSA, from state and local premium taxes; and authorizes the Commissioner of Insurance to conduct a study of HSA-eligible plans available in other states and to establish a "fast track" approval process so that those plans can be made available in the originating state.

NATURAL RESOURCES TASK FORCE

Resolution In Opposition To EPA's Plan To Regulate Greenhouse Gases Under The Clean Air Act

This resolution opposes an EPA plan to regulate greenhouse gases under the Clean Air Act.

Resolution Urging Congress To End The Outer Continental Shelf Moratorium On Oil And Natural Gas Exploration And Production

This resolution calls on Congress to end the ban on offshore drilling.

TAX AND FISCAL POLICY TASK FORCE

A Resolution Urging Congress To Reject "Windfall Profits" Taxes On Energy Companies

This resolution calls on Congress to reject any "windfall profits" tax on energy companies.

An Act Relating To Recovery Audits For Government Overpayments Of Tax Dollars

This bill would establish a recovery audit to recover any overpayment to a private contractor in excess of the legal amount entitled. The director of the state budget office will be responsible for this audit. The director will require a recovery audit on all state agencies whose total expenditures in a fiscal biennium exceed \$50 million.

Statement Of Principles On Philanthropic Freedom

This resolution urges state legislatures not to encroach on the freedom of foundations to operate as private institutions. It opposes discriminatory taxation and the imposition of excessive regulations on foundations.

The full text of all Model Legislation is available to ALEC Members online at www.alec.org.

ALEC Member Companies Offer Hurricane Disaster Aid

By ALEC Staff



U.S. Air Force photo by Staff Sgt. Jacob N. Bailey

Generators, bottled water, and medical supplies are among the top priority items being provided by ALEC private sector members to victims of recent hurricanes in the Gulf Coast region and the Caribbean.

Diageo, the world's leading spirits, beer and wine company, donated and delivered two high-powered generators and more than 176,000 gallons of water to the area. One generator went to Capitol Home Rehabilitation and Nursing in Baton Rouge. Because many of the patients have immediate medical needs, the Louisiana Governor's office deemed this facility as a top priority. A team of Diageo representatives delivered the generator and worked with the U.S. Army Corps of Engineers to help set up and connect it.

"The generator that was delivered by Diageo proved to be the difference, literally, between life and death for many of our patients," said Patrick Rambin, the Nursing Home Administrator. Ivan Menezes, Diageo North America's President and CEO said, "Diageo has been in constant touch with Governor Jindal's office to determine the areas with the most critical need for generators and potable water."

This relief effort is part of Diageo's Spirit of the Americas Humanitarian Aid program. Established in the aftermath of the September 11th attacks, this program provides immediate relief and disaster aid around the world. To date, Diageo has delivered food and emergency supplies to Afghanistan, Sudan, Iraq, Haiti, the Dominican Republic, Mississippi, New Orleans, Texas, Florida, Alabama, Grenada, and Jamaica.

Wal-Mart Stores Inc., the world's largest retailer, is currently working with long-time partners, the American Red Cross and The Salvation Army, to provide pharmacy services for evacuees at 18 emergency centers. The company has also donated nine truckloads of water to American Red Cross emergency centers

in Alabama, Louisiana and Mississippi. In Southern Florida Wal-Mart is working with Missionary Flights International to provide food, dry goods, clothing, and cash donations to aid Haitian residents. Wal-Mart is also providing disaster pay to associates who work in facilities that are closed due to the hurricane.

Another ALEC Member, the Pharmaceutical Research and Manufacturers of America (PhRMA), responded to conditions created by recent hurricanes in Louisiana, Texas, and other Gulf Coast states by moving to ensure needed medicines are available in areas affected by the storm. PhRMA is working closely with other members of the RxResponse network to provide assistance to state, local, and federal emergency managers to keep the pharmaceutical supply chain open throughout impacted areas.

"We are ready to help wherever we are needed and in any way we can," said Billy Tauzin, PhRMA President and CEO. "We are working together with key players in the pharmaceutical supply system and with emergency managers on the ground to help ensure that medicines get to the patients, hospitals, and emergency evacuation centers where they are needed most."

Created following Hurricane Katrina, RxResponse is a unique business-sector effort creating a single point of contact for emergency managers and public health leaders seeking help obtaining needed medicines after a natural or man-made disaster. The RxResponse is comprised of: the American Hospital Association, the American Red Cross, the Biotechnology Industry Organization, the Generic Pharmaceutical Association, the Healthcare Distribution Management Association, the National Community Pharmacists' Association, and PhRMA.

UPS, the world's largest package delivery company, is working with local authorities in hurricane impacted areas to keep its fleet of delivery vehicles on the roads and available to help deliver emergency supplies. The UPS Foundation is also providing over \$1 million to the American Red Cross, Aidmatrix, and CARE International to help people impacted by the recent hurricanes.

"With thousands of employees and several facilities affected in the stricken areas, UPS knows first hand of the destruction caused by hurricanes," said Mike Eskew, chairman and CEO. "We are committed to helping individuals in the communities in which we live and work to overcome this immediate crisis and then rebuild their lives."

For more information please visit:

www.diageo.com

www.phrma.org

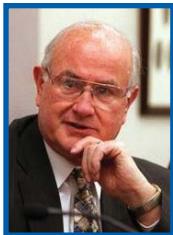
www.community.ups.com

<http://walmartstores.com>

www.rxresponse.org



Member News



Former ALEC National Chairman Passes Away

Former Colorado Senate President Ray Powers passed on Friday, September 19, 2008 at the age of 79. Sen. Powers was a long time member of the American Legislative Exchange Council and served on the ALEC Board of Directors and as the 1995 National Chairman. For 22

years, Sen. Powers represented El Paso County. He was most recognized for his work on transportation issues including Senate Bill 1, which established the mechanism for putting money into roads and transit projects still used today. He also helped pass tax cuts and gun-rights legislation and he wrote the single-subject rule for statewide ballot initiatives. He left office in 2000 as a result of term limits.



Past Member of ALEC's Private Enterprise Board, Sadly Passed

J. Patrick Rooney of Indianapolis, a former member of ALEC's Private Enterprise Board of Directors, passed on Monday, September 15, 2008 at the age of 80. Mr. Rooney was an early advocate of medical savings accounts and was

the Chairman Emeritus of Golden Rule Insurance Co. He was well known to ALEC members for his support of school choice and served as the Chairman of ALEC's Education Task Force for a time. Mr. Rooney remained active in these issues, working with the Indianapolis-based Fairness Foundation, founded in 1998 to assist low-income children in getting access to better education and to assist the uninsured in obtaining quality health care.



New Maryland Senate Minority Leader

ALEC Legislator, Senator Allan Kittleman, has been named Maryland Senate Minority Leader. He has been a senator since 2004 and was Minority Whip since 2006. Sen. Kittleman serves on the senate Finance, Executive

Nominations, Legislative Policy committees, as well as the Joint Committee on Administrative, Executive and Legislative Review, and Workers' Compensation Benefit and Insurance Oversight Committee. Allan credits his father, the late Robert H. Kittleman (a former Maryland State Senator and a former Minority Leader of the Maryland House of Delegates), for teaching him the value of hard work, personal responsibility, and honesty in government.

States & Nation
POLICY SUMMIT
December 4-6, 2008
The Marriott Wardman Park Hotel
Washington, D.C.
Registration – October 1
www.alec.org

AMERICAN LEGISLATIVE EXCHANGE COUNCIL
ALEC

1101 Vermont Ave., NW, 11th Floor
Washington, D.C. 20005
www.alec.org

NONPROFIT ORG
US POSTAGE
PAID
SUBURBAN MD
PERMIT No. 2295